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Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

JANA HERDER, individual

Plaintiff,

v.

HUTCHINS IMPORTED MOTORS, INC,
dba LITHIA TOYOTA OF
SPRINGFIELD, a domestic corporation,

Defendant.

Civ. No. 6:18-cv-00529-MC

PLAINTIFF'S LAY WITNESS LIST

Pursuant to the order of the Court, plaintiff intends to call the following lay witnesses at trial.

Witness 1: Jana Herder
2190 Norkenzie Rd, Eugene, OR 97402
1.5 hours

Ms. Herder will testify consistent with her deposition. In addition, she will testify about her purchase and subsequent issues as follows.

On July 13, 2017 Ms. Herder purchased a 1991 Toyota 4Runner (4Runner) from Lithia Toyota of Springfield (Lithia). She had worked on the deal for several days and was finally able to complete the purchase on the 13th. In her trips to the store before the 13th, she attempted to

purchase the 4Runner with her wife, Ariel Fair. She will testify about that process and how they could not get the financing to work with both of them on the deal. Ms. Herder will also testify about this being her first vehicle purchase and the first major purchase of her young marriage. She will testify about her need for a new vehicle and her desire for something that would allow her to go off road from time to time for camping and hiking trips.

Ms. Herder was drawn to Lithia's store by an advertisement that showed the 4Runner in good condition and with low miles. Ms. Herder will testify that this advertisement represented the 4Runner to be in great condition and advertised the mileage as a little over 150,000 miles without any disclaimers or warnings regarding the mileage.

Ms. Herder will testify about her interactions with the various sales and financing individuals at Lithia. She will testify about the discussions she had with her sales representative, Chris Vann, and about the representations he made to her and her wife about the condition and value of the 4Runner. Chris Vann, and other members of Lithia's sales staff, made repeated representations about the great condition of the 4Runner for its age and about how it had very low mileage for its year. Ms. Herder will testify that any time the mileage was discussed as being incorrect, she was assured that it was correct and there is no way it could be off.

Ms. Herder will testify that before her purchase, she researched the history of Toyota 4Runners from the early 1990s. She discovered many enthusiast message boards on the internet with discussions about the durability and longevity of the 4Runners from this era. Specifically, the internet discussions pointed out the engine in these 4Runners typically run for about 300,000 miles and at the 150,000 mile mark, they should have their timing belt and water pump replaced. Ms. Herder used that information in her valuation and negotiation for the purchase of the 4Runner. Specifically, she believed that this 4Runner had just over 150,000 miles driven, so it

was about half way through its life. She also used this knowledge to negotiate the replacement of the timing belt and water pump. Ms. Herder will testify that she would not have purchased the 4Runner at any price if she knew the mileage was incorrect or unknown.

During this final negotiation process, and while signing all of the purchase documents for the 4Runner, Ms. Herder was presented with a Carfax report. This Carfax report indicated that there was a mileage discrepancy and the odometer may not be correct. Ms. Herder will testify that she observed this on the Carfax report and asked what it all meant. She was reassured by the staff at Lithia that Lithia had researched this issue and this was an error on the Carfax report and she had nothing to worry about because the advertised mileage of 157,758 was correct. Satisfied with this response, Ms. Herder signed the Carfax report as requested by Lithia.

Ms. Herder will also testify that she was presented with a DMV Secure Odometer Disclosure form to sign while she was closing the deal for the 4Runner. This was presented by Stephen Bennett, the finance and insurance manager at Lithia who oversaw the closing of Ms. Herder's sale. He presented the document showing 157,758 as the miles as the actual miles of the vehicle. Ms. Herder will testify that Stephen Bennett signed the form in front of her certifying the mileage of 157,758 to be the actual mileage of the 4Runner.

Ms. Herder will testify that within a few weeks after the purchase of the 4Runner in September of 2017, the 4Runner broke down on Interstate 5 near Salem when her wife was driving the 4Runner. Ms. Herder will testify that her wife called her in tears wondering what to do with 4Runner and about the stressful event she just lived through having to navigate a non-running vehicle off the road on highway traffic. Ms. Herder will discuss how the 4Runner was towed to Capitol Toyota in Salem. While it was at Capitol Toyota, she learned for the first time that the mileage was actually greater than what Lithia represented. Capitol Toyota was very

familiar with this specific 4Runner and had been involved in its maintenance and service for many years. Ms. Herder learned from Capitol Toyota that the 4Runner had its instrument cluster, including the odometer, replaced at the Capitol Toyota store years before she made her purchase. She will also testify that she learned from Capitol Toyota that not long before she purchased the 4Runner, it was at their store for service and they recommended the engine be replaced. The information about the recommended engine replacement was recorded on the Toyota Service Lane software system, a software service that Toyota Motor Corporation uses for tracking service of its vehicles and makes available to all franchise dealers, including Lithia. The owner at the time declined and soon after traded this 4Runner in at Lithia's store. Ms. Herder will testify that Lithia did not disclose these recommended repairs to her at any time.

Ms. Herder will testify about the help she received in dealing with the broken down vehicle from her father, Todd Herder. Specifically she will testify about their collective interactions with Capitol Toyota and her father's subsequent research into the 4Runner. Ms. Herder will testify about her father's counsel and guidance and how she shared all of the small details of her purchase with her father. She will testify that they worked together to try and resolve this issue with Capitol Toyota and how they worked together to get where they are today.

Ms. Herder was damaged financially by Lithia's misrepresentations. She purchased the 4Runner without being told about its service history, including the repairs recommended by Capitol Toyota, and without being told the odometer reading was incorrect. She incurred a loan obligation, lost \$3,000 as a downpayment, and now makes monthly payment for a vehicle that she has not been able to drive since September of 2017. She incurred the stress of having to deal with a breakdown and figuring out how to climb out of this financial mess. She ended up with a 4Runner that is worth far less than was represented because of the mileage discrepancy. Ms.

Herder will testify about how this financial hardship had been difficult to deal and has created undue stress in her life and marriage.

Witness 2: Todd Herder
3021 NW Angelica Drive, Corvallis, OR 97330
1 hour

Mr. Herder will testify about his interactions with his daughter, Jana Herder, regarding the purchase of the vehicle and its subsequent breakdown. Specifically, he will testify about the way Ms. Herder was treated by Lithia during the purchase. He will testify that Ms. Herder told him she felt like these men were trying to intimidate these young girls and not treating them with respect. He will discuss the disclosures made about the vehicle by Lithia insisting it was in great condition. Mr. Herder will also testify about the good job Ms. Herder did negotiating the repairs to the 4Runner at the time of sale based on her research.

Mr. Herder will also testify about the breakdown of the 4Runner just weeks after its purchase. Todd was contacted by Ariel Fair, his daughter-in-law, immediately after the 4Runner broke down on Interstate 5. He will discuss how she was in tears, was very distraught about the event, and how dangerous it was operating a vehicle that had broken down on the freeway. He will testify about how he advised Ms. Fair to tow the 4Runner to Capitol Toyota, the nearest Toyota dealership. He will also testify about the phone call he received from the service manager at Capitol Toyota informing him that the instrument cluster, including the odometer, were replaced by Capital Toyota many years ago. Mr. Herder will also testify about Capitol Toyota's disclosure of their prior service on this 4Runner and how they recommended an engine replacement to the prior owner not long before it was traded in at Lithia. He will also testify about how he learned from Capitol Toyota's service manager that this information was recorded

on the Toyota Service Lane software system, a software service that Toyota Motor Corporation uses for tracking service of its vehicles and makes available to all franchise dealers, including Lithia.

Mr. Herder will also testify about the research he did into the 4Runner after the breakdown. This will include his research into the service history from Toyota Motor Corporation, Carfax, as well as the documents provided by Lithia at the time of sale.

Witness 3: Ariel Fair
2190 Norkenzie Rd, Eugene, OR 97402
1 hour

Ariel Fair will testify about her interactions with her wife, Jana Herder and the purchase of the vehicle. Ms. Fair will testify about the numerous discussions she had with her wife about the purchase of the 4Runner before they decided to buy. Ms. Fair will testify about their decision to purchase the 4Runner and the research discussed with her wife to solidify that decision. She will testify about the advertisement she saw representing the 4Runner to be in good condition with very low miles for its year.

Ms. Fair will testify about her trips to the Lithia store with her wife and her involvement in the sale as a potential co-buyer. Ms. Fair will testify about how she was not able to be a co-buyer of the vehicle because of issues with her credit. She will testify about Lithia's statements about the great condition of the 4Runner and their representations of mileage being correct. She will discuss how any time she and her wife discussed the mileage being off or incorrect, they were assured it was right and it could not be wrong. She will testify that she and her wife would not have purchased the 4Runner if they knew the mileage was incorrect or unknown.

Ms. Fair will also testify about the breakdown of the vehicle. She will testify that she

was driving the 4Runner alone on Interstate 5 in early September, that it was a rainy day and driving conditions were bad, and that she had to navigate a dead vehicle off of the freeway in these conditions. She will discuss the stress she was under during this process and her subsequent tear-filled discussions with her wife and her father-in-law. She will discuss how she had the 4Runner towed to Capitol Toyota. She will also testify about the interactions with about the interactions with Capitol Toyota after the breakdown regarding the true mileage and the prior recommended work on the 4Runner that Lithia did not disclose at the time of sale.

Ms. Fair will testify how this has been a financial burden on her family, specifically how they have been required to make a monthly payment for a vehicle they have not been able to drive since September 2017. She will discuss the stress in her life and that of her wife as a direct result of Lithia's failure to disclose the prior mechanical defects of the 4Runner and by not disclosing the true and correct mileage of the 4Runner.

DATED: August 2, 2019

/s/Adam Hanson

Adam Hanson, OSB# 123355